

## **REMARKS**

### **A. Background**

Claims 1-34 are pending. The Office Action of February 13, 2006 rejected Amendment A as being non-compliant for the failure to provide a proper status identifier of all the pending claims. By the current Amendment, the deficiency has been corrected and a proper status identifier for each pending claim has been provided. The Office Action of September 7, 2005 rejected (i) claims 1-34 under 35 U.S.C. §102(a) as being obvious in light of Kettler (WO). Additionally, the Office Action rejected (i) claims 18-23 under 35 U.S.C. §112 as failing to comply with the enablement requirement. Claims 1-17 are rejected under 35 U.S.C. §103(a) as being obvious in light of Yu. By this response, Applicants amends claims 1, 10, 18, and 24. Claims 28-34 have been cancelled. Accordingly, claims 1-27 are presented for the Examiner's reconsideration in light of the amendments and the following remarks.

### **B. Drawings**

In the office action, the drawings were objected to under 37 CFR 1.83(a) because the fail to show where nut 26 is connected to the channel bracket assembly and the exact location of the bracket in figures 2-3. In response to the Examiner's objection, the applicant respectfully submits that Figure 2, 3, and 5A facilitate a complete understanding of the connection of nut 26 and configuration and location of the channel bracket. Applicant suggests, that an amendment to the specification could help to clarify the location of nut 26 and bracket. Applicant requests that the last line of paragraph 42 be amended to read, "Channel bracket 34 is connected to nut 26 (see Figs. 3 and 5A) to receive the forces exerted by lift motor."

The description of Figure 5A, also helps to understand the position of channel bracket 34 and nut 26 by providing another view of channel bracket 34 and nut 26. Paragraph 50 explains the depiction of channel bracket 34 in Figure 5A:

The juxtaposition of channel bracket 34, cross member 36, and tread base support members 38a, b relative to one another is also shown. Tread base support members 38a, b are positioned on the end of cross member 36. The proximal portion of tread base support members 38a, b are pivotally coupled to tread base 40 at tread base pivot 42. Tread base support member 38a is coupled to tread base 40 at first pivot mechanism 44a. Tread base support member 38b is coupled to tread base 40 at second pivot mechanism 44b.

In Figure 2, while the entire length of channel bracket 34 is somewhat obscured in order to clearly illustrate the position of pivoting plate 30a, it can be seen that, "Nut 26 is rigidly coupled to the end of channel bracket assembly 34," as described in paragraph 39. With reference to Figure 5A, paragraph 51 more clearly explains the positioning of nut 26 relative to the channel bracket assembly: "Lift motor 22 causes rotational movement of lead screw 24...Lead screw 24 engages nut 26 such that rotational movement of lead screw 24 causes movement of the distal portion of channel bracket 34."

In summary, applicant submits that Figure 5A provides sufficient detail to allow for a proper understanding of the disclosed invention and that amendment to the drawings is not needed pursuant to MPEP §608.02(d). Applicant requests that the specification be amended as previously referenced to further clarify the position of nut 26 and channel bracket 34.

C. Claims 18-23 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully traverse. Applicant submits that the clarifications suggested with respect to the drawings are sufficient to enable one skilled in the art to make and/or use the invention. Additionally, applicant submits that the additional amendments

to the claims described hereinafter further clarify the claims sufficiently to comply with the enablement requirement.

D. Proposed Claim Amendments

Applicants amended claims 1, 10, 18, and 24. Applicants respectfully submit that the amendments to the claims do not introduce new matter, and entry thereof is respectfully requested.

E. Rejections Under 35 U.S.C. §102(e)

Claims 1-34 were rejected under 35 U.S.C. §103(a) in light of International Patent No. WO 03/101543 issued to Kettler et al. (hereinafter "the Kettler patent"). Applicants respectfully traverse.

The Kettler patent discloses an inclining treadmill. Specifically, the Kettler patent discloses an inclining treadmill having a treadbase which is coupled to a pivoting hood. The pivoting hood is also coupled to the frame of the treadmill. A lift arm engages the hood between the point of connection with the tread base and the point of connection with the frame to lift the hood and cause inclining of the tread base.

Claim 1 has been amended to recite "the pivoting hood assembly having a proximal end, a distal end, and a hood assembly pivot positioned therebetween; an inclining tread base pivotally coupled to the proximal end of the pivoting hood assembly, and a lift motor adapted to engage the distal end of the pivoting hood assembly to pivot the pivoting hood assembly and cause inclining of the tread base." A number of advantages can be provided by having the lift

motor engage the distal end of the pivoting hood assembly to pivot the pivoting hood assembly, rather than the area between the pivoting hood assembly and the treadbase. For example, a greater degree of incline of the tread base can be achieved with a shorter extension arm, or other lift structure than traditional treadmills.

The Kettler patent neither alone, or in combination with the cited art of record, teaches nor suggests a pivoting hood assembly having a hood assembly pivot positioned between the distal end and the proximal end of the pivoting hood assembly with a lift motor adapted to engage the distal end of the pivoting hood assembly to pivot the pivoting hood assembly and cause inclination of the tread base. As a result, claim 1 should be in condition for allowance.

Independent claim 10 has been recited to recite, "a lift motor adapted to engage the pivoting hood assembly such that retraction of the lift motor increases the degree of incline of the tread base and extension of the lift motor decreases the degree of incline of the tread base." The Kettler patent neither alone, or in combination with the cited art of record, teaches nor suggests the use of a lift motor in which retraction of the lift motor increases the degree of incline of the tread base and extension of the lift motor decreases the degree of incline of the tread base. As a result, claim 10 should be in condition for allowance.

Independent claim 18 has been amended to recite, "a lift motor adapted to engage the distal end of the pivoting hood assembly to pivot the pivoting hood assembly and cause inclination of the inclining tread base such that retraction of the lift motor increases the degree of incline of the tread base and extension of the lift motor decreases the degree of incline of the treadbase." The Kettler patent neither alone, or in combination with the cited art of record, teaches nor suggests that first and second audio video input/output devices having a display that

includes a plurality of interface devices to allow a user to change one or more parameters of the exercise devices. As a result, claim 42 should be in condition for allowance.

Independent claim 24 has been amended to recite that "a bracket assembly pivotally linked to the frame in connection with a hood assembly pivot, the hood assembly pivot being offset from the distal end of the hood housing, wherein the lift motor engages the bracket assembly to pivot the pivoting hood assembly; such that pivoting of the pivoting hood assembly causes inclination of the inclining tread base, the offset between the hood assembly pivot and the distal end of the housing causing lifting of the distal end of the hood housing during pivoting of the pivoting hood assembly."

The Kettler patent neither alone, or in combination with the cited art of record, teaches or suggests a bracket assembly pivotally linked to the frame in connection with a hood assembly pivot where the hood assembly pivot is offset from the distal end of the hood housing. Additionally, the Kettler patent fails to teach or suggest that the offset between the hood assembly pivot and the distal end of the hood housing causing lifting of the distal end of the hood housing during pivoting of the pivoting hood assembly. As a result, claim 24 should be in condition for allowance.

Claims 1-17 and 24-23 were rejected under 35 U.S.C. §103(a) in light of United States Patent No. 4,749,540 issued to Yu et al. (hereinafter "the Yu patent"). Applicants respectfully traverse. The Yu patent discloses a treadmill that can be inclined by a crank mechanism positioned below the hood assembly of the treadmill. The hood assembly disclose in the Yu patent does not pivot. As each of independent claims 1, 10, 18, and 24 recite a pivoting hood assembly, the disclosure of Yu fails to teach or suggest a treadmill having the limitations of the claimed invention.

Applicants respectively submit that pending independent claims 1, 10, 18, and 24, as amended and presented herein, are neither disclosed in the Kettler or Yu patents nor obvious variations of the apparatus disclosed therein. Dependent claims 2-9, 11-17, and 25-27 include the limitations of independent claims 1, 10, 18, and 24 respectively. Accordingly, it is respectfully submitted that dependent claims 2-9, 11-17, and 25-27 should be in condition for allowance.

F. Summary and Conclusion

In view of the foregoing, Applicants respectfully request favorable reconsideration and allowance of the present claims. In the event that the Examiner finds any remaining impediment to the prompt issuance of the pending claims, which could be remedied through a telephonic conversation, or which is susceptible to being overcome by means of an Examiner's Amendment, the Examiner is respectfully invited to initiate the same with the undersigned attorney.

Dated this 28<sup>th</sup> day of March, 2006.

Respectfully submitted,



Ryan D. Benson  
Registration No. 54,767  
Attorney for Applicant  
Customer No. 022913